

Mustang Air Express, Inc. and Local Union No. 776, International Brotherhood of Teamsters, AFL-CIO. Case 4-CA-20086

February 21, 1992

DECISION AND ORDER

BY MEMBERS DEVANEY, OVIATT, AND
RAUDABAUGH

Upon a charge filed by the Union September 19, 1991, the General Counsel of the National Labor Relations Board issued a complaint against Mustang Air Express, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On January 13, 1992, the General Counsel filed a Motion for Summary Judgment. On January 15, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board."

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Pennsylvania corporation, is engaged in the operation of a common freight forwarding terminal in Middletown, Pennsylvania, where, during the year preceding issuance of the complaint, it received in excess of \$50,000 for handling, transporting, and delivering freight coming to and from the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section

2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit (the unit) appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers and dock workers employed at the Terminal; excluding all other employees, including driver-operators, guards and supervisors as defined in the Act.

On June 17, 1991, the Union was certified as the exclusive representative of the unit.

By virtue of Section 9(a) of the Act, the Union is now, and has been at all material times, the exclusive representative of the unit for purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

On or about August 16, 1991, the Union, through its president, Thomas B. Griffith, sent a letter to William Staller, who is the Respondent's president, a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act, requesting, inter alia, the following information:

Current list of employees including name . . . address and date of hire; summary plan description of current health insurance and pension/retirement plan, including cost factors; current starting and quit times for each employee; current hourly wages, including overtime policy, for each employee; current work rules which apply to bargaining unit employees; vacation policy; sick leave policy; attendance policy; current holidays, sick days and personal days for bargaining unit employees; bereavement policy; information on all other fringe benefits not requested above.

This information is necessary for, and relevant to, the Union's performance of its function as the exclusive representative of the unit.

On or about August 16, 1991, the Union, by letter, requested, inter alia, that the Respondent begin negotiations with the Union as the exclusive representative of the unit. Since on or about August 16, 1991, the Respondent has failed and refused, and continues to fail and refuse, to furnish the Union with the information described above. Since on or about August 16, 1991, the Respondent

has failed and refused, and continues to fail and refuse, to recognize the Union and to bargain with the Union as the exclusive representative of the unit.

We find that by the above-described conduct the Respondent has failed and refused, and is failing and refusing, to bargain collectively and in good faith with the Union and has thereby violated Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

CONCLUSIONS OF LAW

By failing and refusing to provide information requested by the Union on August 16, 1991, which is necessary for, and relevant to, the Union's performance of its function as the exclusive representative of the unit, and by failing and refusing on and after August 16, 1991, to recognize and bargain collectively with the Union as the exclusive representative of the unit, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent, Mustang Air Express, Inc., Middletown, Pennsylvania, has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. We shall order the Respondent to furnish the Union the information requested and to recognize and bargain with the Union as the exclusive representative of its employees in the unit.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Mustang Air Express, Inc., Middletown, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain collectively with Local Union No. 776, International Brotherhood of Teamsters, AFL-CIO as the exclusive representative of the unit employees.

(b) Failing and refusing to provide information requested by the Union on August 16, 1991, which is necessary for, and relevant to, its performance of its function as the exclusive representative of the unit employees.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time drivers and dock workers employed at the Terminal; excluding all other employees, including driver-operators, guards and supervisors as defined in the Act.

(b) On request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

(c) Post at its facility in Middletown, Pennsylvania, copies of the attached notice marked "Appendix"¹ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail and refuse to, on request, meet and bargain with Local Union No. 776, International Brotherhood of Teamsters, AFL-CIO as the exclusive collective-bargaining representative of employees in the following appropriate unit:

All full-time and regular part-time drivers and dock workers employed at the Terminal; excluding all other employees, including driver-operators, guards and supervisors as defined in the Act.

WE WILL NOT fail and refuse to provide the Union information which is necessary for, and relevant to, its performance of its function as the exclusive representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

WE WILL, on request, furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

MUSTANG AIR EXPRESS, INC.